

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 196

Introduced by Raikes, 25

Read first time January 7, 2005

Committee: Education

A BILL

1 FOR AN ACT relating to postsecondary education; to amend sections
2 85-1402 and 85-1409, Reissue Revised Statutes of
3 Nebraska, and sections 85-1414 and 85-1920, Revised
4 Statutes Supplement, 2004; to redefine terms; to change
5 provisions relating to quorum and project review; to
6 provide for carryover of appropriations; and to repeal
7 the original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 85-1402, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 85-1402. For purposes of the Coordinating Commission for
4 Postsecondary Education Act:

5 (1) (a) Capital construction project shall mean a project
6 which utilizes tax funds designated by the Legislature and shall
7 be: Any proposed new capital structure; any proposed addition to,
8 renovation of, or remodeling of a capital structure; any proposed
9 acquisition of a capital structure by gift, purchase,
10 lease-purchase, or other means of construction or acquisition that
11 (i) will be directly financed in whole or in part with tax funds
12 designated by the Legislature totaling at least the minimum capital
13 expenditure for purposes of this subdivision or (ii) is likely, as
14 determined by the institution, to result in an incremental increase
15 in appropriation or expenditure of tax funds designated by the
16 Legislature of at least the minimum capital expenditure for the
17 facility's operations and maintenance costs in any one fiscal year
18 within a period of ten years from the date of substantial
19 completion or acquisition of the project. No tax funds designated
20 by the Legislature shall be appropriated or expended for any
21 incremental increase of more than the minimum capital expenditure
22 for the costs of the operations and utilities of any facility which
23 is not included in the definition of capital construction project
24 and thus is not subject to commission approval pursuant to the
25 Coordinating Commission for Postsecondary Education Act. No
26 institution shall include a request for funding such an increase in
27 its budget request for tax funds designated by the Legislature nor
28 shall any institution utilize any such funds for such an increase.

1 The Governor shall not include in his or her budget
2 recommendations, and the Legislature shall not appropriate, such
3 funds for such increase.

4 (b) For purposes of this subdivision:

5 (i) Directly financed shall mean funded by:

6 (A) Appropriation of tax funds designated by the
7 Legislature for the specific capital construction project;

8 (B) Property tax levies used to establish a capital
9 improvement and bond sinking fund pursuant to section 85-1515; or

10 (C) That portion of tax funds designated by the
11 Legislature and appropriated by the Legislature for the general
12 operation of the public institution and utilized to fund the
13 capital project;

14 (ii) Incremental increase shall mean an increase in
15 appropriation or expenditure of tax funds designated by the
16 Legislature of at least the minimum capital expenditure for a
17 facility's operations and maintenance costs, beyond any increase
18 due to inflation, to pay for a capital structure's operations and
19 maintenance costs that are a direct result of a capital
20 construction project; and

21 (iii) Minimum capital expenditure shall mean:

22 (A) For purposes of subdivision (a)(i) of this
23 subdivision, a base amount of ~~two~~ five hundred thousand dollars;
24 and

25 (B) For the facility's operations and maintenance costs
26 pursuant to subdivision (a)(ii) of this subdivision, a base amount
27 of fifty thousand dollars for any one fiscal year.

28 Both base amounts shall be subject to any inflationary or

1 market adjustments made by the commission pursuant to this
2 subdivision. The commission shall adjust the base amounts on a
3 biennial basis beginning January 1, ~~1996~~ 2008. The adjustments
4 shall be based on percentage changes in a construction cost index
5 and any other published index relevant to operations and utilities
6 costs, both as selected by the commission in cooperation with the
7 public institutions. The index or indices shall reflect
8 inflationary or market trends for the applicable operations and
9 maintenance or construction costs;

10 (2) Commission shall mean the Coordinating Commission for
11 Postsecondary Education;

12 (3) Coordination shall mean:

13 (a) Authority to adopt, and revise as needed, a
14 comprehensive statewide plan for postsecondary education which
15 shall include (i) definitions of the role and mission of each
16 public postsecondary educational institution within any general
17 assignments of role and mission as may be prescribed by the
18 Legislature and (ii) plans for facilities which utilize tax funds
19 designated by the Legislature;

20 (b) Authority to review, monitor, and approve or
21 disapprove each public postsecondary educational institution's
22 programs and capital construction projects which utilize tax funds
23 designated by the Legislature in order to provide compliance and
24 consistency with the comprehensive plan and to prevent unnecessary
25 duplication; and

26 (c) Authority to review and modify, if needed to promote
27 compliance and consistency with the comprehensive statewide plan
28 and prevent unnecessary duplication, the budget requests of the

1 governing boards or any other governing board for any other public
2 postsecondary educational institution which may be established by
3 the Legislature;

4 (4) Education center shall mean an off-campus branch of a
5 public institution or cooperative of either public or public and
6 private postsecondary educational institutions which offers
7 instructional programs to students;

8 (5) Governing board shall mean the Board of Regents of
9 the University of Nebraska, the Board of Trustees of the Nebraska
10 State Colleges, or the board of governors for each community
11 college area;

12 (6) Program shall mean any program of instruction which
13 leads directly to a degree, diploma, or certificate and, for
14 purposes of section 85-1414, shall include public service programs
15 and all off-campus instructional programs, whether or not such
16 programs lead directly to a degree, diploma, or certificate.
17 Program shall also include the establishment of any new college,
18 school, major division, education center, or institute but shall
19 not include reasonable and moderate extensions of existing
20 curricula which have a direct relationship to existing programs;

21 (7) Public institution shall mean each campus of a public
22 postsecondary educational institution which is or may be
23 established by the Legislature, which is under the direction of a
24 governing board, and which is administered as a separate unit by
25 the board; and

26 (8) Tax funds designated by the Legislature shall mean
27 all state tax revenue and all property tax revenue.

28 Sec. 2. Section 85-1409, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 85-1409. (1) The members of the commission shall
3 annually elect a chairperson and vice-chairperson from among their
4 members.

5 (2) The commission shall hold regular meetings at times
6 determined by the commission. Special or additional meetings may
7 be held on the call of the chairperson or upon the call of at least
8 three members. A majority of the members shall constitute a quorum
9 at all meetings. Commission action on any item shall require a
10 majority of those present at meetings in which there is a quorum,
11 except that adoption of the comprehensive statewide plan, or any
12 changes or alternatives thereto, required by section 85-1413 and
13 approval or disapproval of a new program or disapproval of an
14 existing program pursuant to section 85-1414 shall require the
15 concurrence of a majority of the members.

16 Sec. 3. Section 85-1414, Revised Statutes Supplement,
17 2004, is amended to read:

18 85-1414. (1) Pursuant to the authority granted in
19 Article VII, section 14, of the Constitution of Nebraska and the
20 Coordinating Commission for Postsecondary Education Act, the
21 commission shall establish an ongoing process to review, monitor,
22 and approve or disapprove the new and existing programs of public
23 institutions and proposed capital construction projects which
24 utilize tax funds designated by the Legislature in order to provide
25 compliance and consistency with the comprehensive statewide plan
26 and to prevent unnecessary duplication. When complying with
27 requests for information during the review, monitoring, and
28 approval process, public institutions may comply pursuant to

1 section 85-1417.

2 (2) (a) Governing boards shall submit to the commission
3 all proposals for any new program after the governing board has
4 approved the program and prior to implementation of the program.
5 Except for programs submitted for conditional approval by the
6 commission pursuant to subdivision (b) of this subsection, the
7 commission shall have ninety days from the date the program was
8 submitted to take action to approve or disapprove a program or it
9 shall stand approved. The commission shall establish a waiver
10 process for specific, short-term job training programs and
11 short-term public service programs as defined by the commission.
12 New programs submitted for review may be approved or disapproved in
13 whole or in part and with or without recommended modifications
14 based on criteria established pursuant to subsection (7) of this
15 section.

16 (b) After approval of the program by the governing board,
17 the governing board may submit a proposal for a program which is
18 not authorized by the role and mission provisions of sections
19 85-917 to 85-966 to the commission for conditional approval.
20 Within one hundred twenty days from its receipt of the proposal,
21 the commission shall report to the Legislature its recommendation
22 in support for or opposition to the amendments to the role and
23 mission statutes that would be necessary for the commission to
24 approve the program and for the institution to offer the program.
25 The time period for submission of the report may be extended for up
26 to an additional ninety days by resolution of the commission which
27 shall show good cause why the extent of review required for this
28 particular proposal necessitates an extension of time to complete

1 the review. Such extension shall be filed with the chairperson of
2 the Education Committee of the Legislature prior to the expiration
3 of the initial one hundred twenty days. The report shall contain
4 supporting rationale for the commission's position, such additional
5 comments as the commission deems appropriate and, in the event the
6 commission supports the amendments to the role and mission
7 statutes, the commission's specific recommendation as to the form
8 of such amendments. If the report indicates support for the
9 necessary amendments to the role and mission statutes, the report
10 shall also constitute the commission's conditional approval of the
11 program, unless the report specifically indicates disapproval of
12 the program. If the necessary amendments to the role and mission
13 statutes supported by the commission in its report to the
14 Legislature are subsequently enacted by the Legislature, the
15 program shall stand approved. Nothing in this section for
16 conditional approval shall be construed to affect the commission's
17 future consideration of such proposal or approval or disapproval of
18 any programs affected by the proposal.

19 (3) Following approval of a new program, such program
20 shall be added to the schedule of existing programs to be reviewed
21 by the commission. Following consultation with the governing
22 board, new programs approved by the commission may also be required
23 to meet, within a reasonable time as stipulated by the commission,
24 minimum performance standards established by the commission
25 pursuant to its rules and regulations. If a program fails to meet
26 minimum performance standards, the commission shall review the
27 program and may continue or withdraw its approval for the program.

28 (4) Existing programs shall be reviewed by the commission

1 pursuant to a program review process established by the commission
2 in consultation with the governing boards or their designated
3 representatives which, to the extent possible while still allowing
4 for timely review by the commission, shall coincide with
5 institutional review and accreditation cycles. In reviewing
6 existing programs, the commission may make use of nonconfidential
7 information and conclusions provided by accreditation processes
8 supplied to the commission by the institutions. All programs in
9 existence prior to January 1, 1992, shall be considered approved
10 until the approval is confirmed or withdrawn by the commission
11 pursuant to the program review process conducted by the commission.

12 (5) Existing programs which do not meet criteria
13 established by the commission pursuant to subsection (7) of this
14 section shall be targeted for indepth review by the public
15 institutions and their governing boards. In performing such
16 indepth review, institutions may make use of information and
17 conclusions provided by accreditation and other established and
18 ongoing academic review processes rather than providing for a
19 separate review process. Programs continued by the governing
20 boards shall be further monitored by the governing board which
21 shall report the status and process of the monitoring to the
22 commission. If the commission determines that a program does not
23 merit continuation, it shall hold a public hearing, following
24 thirty days' notice to the public institution, to consider if the
25 program should be continued. Following the hearing, the commission
26 shall take action to approve or disapprove continuance of the
27 program.

28 (6) Existing programs disapproved for continuance by the

1 commission shall be terminated by a public institution when all
2 students in the program on the date of the decision of the
3 commission to disapprove continuance of the program have had a
4 reasonable opportunity, as determined by the governing board of the
5 public institution, to complete the program. Existing public
6 service programs disapproved for continuance by the commission
7 shall be terminated at the end of the fiscal year in which the
8 decision to disapprove is made.

9 (7) The commission shall establish criteria for the
10 review, monitoring, and approval or disapproval of programs. The
11 governing boards of the public institutions shall be responsible
12 for assuring the quality and effectiveness of programs offered by
13 their institutions. The commission's criteria shall be designed to
14 (a) meet educational needs and (b) assure efficiency and avoid
15 unnecessary duplication. Criteria shall include:

16 (i) Centrality to the role and mission of the public
17 institution;

18 (ii) Consistency with the comprehensive statewide plan;

19 (iii) Evidence of need and demand; and

20 (iv) Adequacy of resources to support proposed new
21 programs.

22 The criteria shall not infringe on the prerogative of the
23 governing boards to make decisions on the quality of staff and the
24 design of curriculum.

25 (8) The commission shall develop specific criteria for
26 review, monitoring, and approval or disapproval of participation by
27 any public institution in proposed or existing education centers in
28 addition to the criteria specified in this section. Participation

1 by a public institution in an education center shall also be
2 approved by the governing board of such public institution. The
3 commission shall develop policies and procedures for conducting and
4 approving off-campus programming in an education center.

5 (9) Each public institution shall submit its most recent
6 institutional facilities plan to the commission subject to
7 commission guidelines for the format and content of such plans.
8 The commission shall (a) review each institutional facilities plan
9 to ensure (i) consistency with the comprehensive statewide plan,
10 statewide facilities plan, and institutional role and mission
11 assignments and (ii) identification of unnecessary duplication of
12 facilities and (b) make a written report of its review to the
13 governing board of the public institution within ninety days after
14 receipt of the institutional facilities plan. The commission may,
15 in accordance with the coordination function of the commission
16 pursuant to section 85-1403, recommend modifications to the
17 institutional facilities plans and may require submission of
18 periodic updates of the institutional facilities plans.

19 (10) Governing boards shall submit all proposed capital
20 construction projects which utilize tax funds designated by the
21 Legislature to the commission for review and approval or
22 disapproval. The commission shall, in accordance with the
23 coordination function of the commission pursuant to section
24 85-1403, review, monitor, and approve or disapprove each such
25 capital construction project to provide compliance and consistency
26 with the statewide facilities plan and the comprehensive statewide
27 plan and to prevent unnecessary duplication of capital facilities.
28 The commission may disapprove a project only on the basis of a

1 finding by the commission that the project (a) does not comply or
2 is inconsistent with one or more provisions of the statewide
3 facilities plan or other relevant provisions of the comprehensive
4 statewide plan or (b) will result in unnecessary duplication of
5 capital facilities.

6 (11) In fulfilling its program and project approval
7 activities prescribed in this section, the commission shall, in
8 accordance with the coordination function of the commission
9 pursuant to section 85-1403, recognize educational activities among
10 all segments of postsecondary education and take into account the
11 educational programs, facilities, and other resources of both
12 public and independent and private postsecondary educational
13 institutions.

14 (12) Any program which is authorized by action of the
15 Legislature or a governing board and which is not in existence
16 prior to January 1, 1992, shall not become operative unless and
17 until such program has been approved by the commission pursuant to
18 this section.

19 Sec. 4. Section 85-1920, Revised Statutes Supplement,
20 2004, is amended to read:

21 85-1920. (1) The Nebraska Scholarship Fund is created.
22 Money in the fund shall include amounts transferred from the State
23 Lottery Operation Trust Fund pursuant to section 9-812. For fiscal
24 years 2003-04 and 2004-05, two million dollars shall be used to
25 carry out the Nebraska Scholarship Act, and the remainder accruing
26 to the Nebraska Scholarship Fund shall be transferred to the
27 General Fund. For fiscal year 2005-06, two million five hundred
28 thousand dollars shall be used to carry out the Nebraska

1 Scholarship Act, and the remainder accruing to the Nebraska
2 Scholarship Fund shall be transferred to the General Fund. For
3 fiscal year 2006-07 and each fiscal year thereafter, all amounts
4 accruing to the Nebraska Scholarship Fund shall be used to carry
5 out the Nebraska Scholarship Act. Any money in the fund available
6 for investment shall be invested by the state investment officer
7 pursuant to the Nebraska Capital Expansion Act and the Nebraska
8 State Funds Investment Act.

9 (2) Amounts appropriated to the commission to carry out
10 the Nebraska Scholarship Act that remain unexpended at the end of
11 each biennium shall be carried over to the commission's budget for
12 the following biennium for carrying out the purposes of the act.

13 Sec. 5. Original sections 85-1402 and 85-1409, Reissue
14 Revised Statutes of Nebraska, and sections 85-1414 and 85-1920,
15 Revised Statutes Supplement, 2004, are repealed.